



C.M.S.A.(MD)No.29 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.29 of 2013

A.Lakshmi

... Appellant

Vs.

V.Appadurai

... Respondent

PRAYER: This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act and Section 100 of Civil Procedure Code, praying to set aside the judgment and decree of the lower appellate court dated 05.04.2013 in H.M.C.M.A.No.74 of 2010 on the file of the Principal District Judge, Thiruchirappalli, reversing the judgment and decree of the trial Court dated 18.11.2009 passed in H.M.O.P.No.368 of 2006 on the file of Principal Subordinate Judge, Thiruchirappalli and to allow the second appeal.

For Appellant : Mr.B.Vinoth

for Mr.N.C.Ashok Kumar

For Respondents : Mr.M.Karthikeya Venkitachalapathy

for Mr.S.Madhavan



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J U D G M E N T

This Civil Miscellaneous Second Appeal has been preferred as against the order passed in H.M.C.M.A.No.74 of 2010 dated 05.04.2013, on the file of Principal District Judge, Tiruchirappalli, wherein the respondents herein filed an appeal as against the order passed in H.M.O.P. No.368 of 2006, on the file of Principal Subordinate Judge, Tiruchirappalli.

2.Before the Subordinate Judge, Tiruchirappalli, the appellant herein has filed a petition seeking divorce and the same was allowed. Thereafter, the respondent herein preferred an appeal before the Principal District Judge and the same was allowed by setting aside the order passed by the Sub-Judge, Trichy. As against the said order, the present CMSA has been filed by the appellant.

3.The brief facts of averments are as follows:

The respondent is the husband of the appellant. Their marriage took place on 14.09.1973, out of wedlock they got three daughters and one son. The respondent was working in a tea stall and running the family. The elder son of the petitioner died on 04.04.1984 and the appellant's daughter was running a ladies hostel. Thereafter the respondent was not doing any work and used



to stay with the appellant. The appellant purchased a house property in the name of the appellant from her own earnings and by selling her jewels. The respondent has not taken care of the appellant as well as the children and he is having illicit intimacy with other ladies of Musuri, Thillainagar and Jeevanagar. The respondent used to beat the appellant and also the children. On one occasion, the appellant sustained injuries and lodged a complaint in police. The respondent is ill-treating the appellant and causing mental and physical cruelty. The respondent also assaulted his son and caused injuries and he also had complained against the respondent. Further, the respondent had taken the title deeds in respect of the house in which the hostel is running and caused disturbance. Hence, the appellant filed a suit in O.S.No.1615 of 2006 for permanent injunction. Therefore, the respondent caused mental and physical cruelty. Still the respondent is continuing the same, thereby the appellant has filed this petition.

4.The brief facts of the counter averments are as follows:

The marriage and the children between the appellant and the respondent are admitted. All other allegations are denied. The properties are purchased by the respondent out of his hard earned money. His daughter was given in marriage to one Balaskrishnan on 06.06.1996 and the said Balakrishnan is now behind this false litigation. This respondent is only running the hostel and the appellant filed interlocutory application in the suit in O.S.No.1615 of



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2006, on the file of III Additional District Munsif, Trichy and the same was dismissed. The respondent purchased the property in the name of his wife and the respondent only constructed the hostel in the year 2002. The respondent is the second husband of the petitioner and both are still living under one roof. The respondent is willing to live with the petitioner.

5.Before the trial Court the petitioner has examined P.W.1 and P.W.2 and marked Exs.P.1 to P.8. On the side of the respondents R.W.1 was examined but no document was marked.

6.After hearing both sides and perusing the records, the trial Court has allowed the petition and dissolved the marriage. Aggrieved by the above said order, the respondent husband has preferred an appeal before the Principal District Judge, Trichy and the Principal District Judge has reversed the order of the trial Court and allowed the appeal by setting aside the order of divorce granted by the trial Court. Aggrieved by the said order, the present second appeal has been filed by the appellant herein, on various grounds including the substantial question of law.

7.This Court at the time of admission had framed the following substantial question of law:



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'a)Whether the first appellate court has properly appreciated the documentary evidence adduced on the side of the appellant and is it correct to pass in one line order reversing the divorce degree against law?

b)Whether the findings of the first appellate Court that the respondent has not committed any cruelty is correct?'

8.In this case, there is no dispute in respect of marriage between the parties. The appellant herein being wife filed a petition before the trial Court seeking divorce on the ground of cruelty as well as desertion. The trial Court after elaborate discussions came to a conclusion that the petitioner has proved cruelty and granted divorce by dissolving the marriage between the petitioner and the respondent by order dated 18.11.2009. As against the order passed by the trial Court, the respondent husband has preferred first appeal before the Principal District Judge, Trichy and the learned Judge after perusing the records and the evidences adduced on either side, allowed the appeal by holding that the petitioner has shown the business address in the cause title and the same itself would show that the respondent is doing business but the petitioner has not filed any document to show that she is running the business and also she failed to produce any receipts that she sold the jewels and procured money to purchase the property. With regard to the illicit



relationship, not examined sufficient witnesses and thereby has not proved the fact that the respondent caused mental and physical cruelty.

9.As far as the first substantial question of law framed by this Court is concerned, on perusal of the judgment passed by the Principal District Judge, Trichy, the order is not an one line order but an elaborate order has been passed by the learned Judge and the first appellate Court after elaborate discussion only passed the order by setting aside the judgment of the trial Court. The first appellate Court also framed points for determination and also answered the same and the learned Judge also discussed about the documents. Therefore, the first appellate Court properly appreciated the oral and documentary evidences adduced on the side of the appellant and passed a detailed order. Therefore, there is no infirmity or perversity found in the order passed by the first appellate Court. Thus, the first substantial question of law is answered.

10.As far as the second substantial question of law is concerned, the trial Court has already discussed the evidences adduced by the appellant and has not given much importance to the respondent side evidence and the first appellate Court after elaborate discussions and analysing the evidences adduced on both sides, correctly came to the conclusion that the petitioner has not



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proved cruelty. Therefore, the finding of the first appellate Court that the respondent has not committed any cruelty is based on the available evidences adduced by both parties. Therefore, the order passed by the first appellate Court is in order and warrants no interference. Thus, the second substantial question of law is answered.

11.In view of the answers made for the two substantial questions of law, this Civil Miscellaneous Second Appeal has no merits and deserves to be dismissed.

12.In the result, this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs.

16.02.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

MR



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To

1.The Principal District Judge,
Thiruchirappalli.

2.The Principal Subordinate Judge,
Thiruchirappalli.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

MR

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